

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Witness Statement

Testimony of

David Kennedy, Director

Office of Response and Restoration

National Ocean Service

National Oceanic and Atmospheric Administration

before the

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Committee on Resources

U.S. House of Representatives

July 29, 1999

INTRODUCTION AND BACKGROUND

Mr. Chairman, and Members of the Subcommittee, thank you for inviting NOAA to testify today, to present its views on H.R. _____, the "Pribilof Islands Transition Act" (the Act), and to respond to various questions regarding NOAA's activities and responsibilities related to the Pribilofs.

Attached to this testimony are specific comments on the Act and suggested changes to its provisions based on those comments, as well as item-by-item responses to the series of questions posed in the subcommittee's letter of invitation (Attachments 1 and 2, respectively).

The primary focus of my testimony will be on NOAA's views on how the Act would affect NOAA's efforts to meet its responsibilities on the Pribilofs, and the future of the islands and their residents. First, however, I would like to offer background information to set the context for NOAA's comments on the Act.

Historically, NOAA and its predecessor agencies have had a long and complex relationship with the Pribilofs and their residents. This historical relationship is described in considerable detail in a report submitted to Congress by the Secretary of Commerce on March 17, 1997, pursuant to section 3(c) of Public Law 104-91. (See Attachment 3.)

STATUS OF NOAA PROJECTS ON THE PRIBILOFS

Concurrently with negotiations with Congress leading to the enactment of P.L. 104-91, NOAA was engaged in discussions with the government of the State of Alaska regarding the scope and nature of "environmental cleanup" the State would require NOAA to undertake on the islands in preparation for transfer of Federal lands on the islands to the Pribilovians. These negotiations resulted in the execution of a "Two-Party Agreement" (TPA) between NOAA and the State, setting out specific tasks NOAA agreed to complete to the State's satisfaction, and providing terms and conditions to govern the performance of those tasks as well as mechanisms for gaining the State's final approval for each task upon its completion. (Note: The TPA is the same agreement that is referred to in H.R. _____ as the "Pribilof Islands Environmental Restoration Agreement between the National Oceanic and Atmospheric Administration and the State of Alaska, signed January 26, 1996.")

Shortly after the TPA was signed, Public Law 104-91 was enacted. Section 3 of

P.L. 104-91 required that the Secretary of Commerce -

(a) undertake specified cleanup activities on the Pribilofs;

(b) adhere to various provisions in the course of carrying out cleanup activities, including a prohibition on seeking or requiring financial contributions by or from local entities or landowners;

(c) prepare a report to Congress "proposing necessary actions by the Secretary ... and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of" requirements under the Fur Seal Act Amendments of 1983, the Alaska Native Claims Settlement Act, the provisions of P.L. 104-91, and "any other matters the Secretary deems appropriate." (this report is Attachment 3); and

(d) carry out cleanup work "... to the maximum extent practicable ... through grants or other agreements with local entities and residents of the Pribilof Islands, ...".

P.L. 104-91 authorized appropriation of not to exceed \$10 million per year for each of fiscal years 1996, 1997 and 1998 for the purpose of carrying out its provisions.

Attachment 2 to this statement provides detailed answers to numerous questions about the status of NOAA's efforts to meet its obligations related to the Pribilofs, as well as information on several matters affecting NOAA's progress in completing various tasks. As context for NOAA's comments on H.R. _____, it is the agency's position that two provisions of P.L. 104-91 have in fact impeded NOAA's ability to efficiently and effectively carry out the cleanup requirements set out in that statute and in the TPA. Those two provisions are the "local hire" requirement, and the prohibition against NOAA seeking financial contribution from local entities and landowners.

The "Local Hire" Requirement

As noted above, P.L. 104-91 requires NOAA to carry out its cleanup work on the Pribilofs through grants or other agreements with local entities and residents of the islands, to "the maximum extent practicable." Over the past several years, NOAA has worked diligently and sincerely to ensure that the local hire requirement is met.

An understanding of NOAA's obligations for cleanup under the TPA with the State of Alaska may help put NOAA's efforts into context. NOAA's cleanup obligations have three distinct phases -

- Picking up and removing waste and debris;
- Assessing and identifying remaining contamination; and
- Remediating remaining contamination consistent with cleanup standards in the TPA.

NOAA has used local entities exclusively for the waste and debris removal phase, and that work is continuing. NOAA intends to use a local entity on St. Paul to finish this phase of work, which was to have been completed under an earlier agreement.

With regard to assessing and identifying remaining contamination to determine the scope of Phase II work, NOAA has determined that there would be a conflict of interest in using local hire to evaluate the need for additional work on the Pribilof Islands. To avoid any conflict of interest, NOAA will employ one or more independent contractors to conduct required soil sampling and other environmental tests, as needed.

Should testing confirm that there is petroleum contamination on sites for which NOAA is responsible, the remediation effort required under the TPA will necessitate the use of qualified environmental professionals with technical expertise and experience in addressing these tasks. NOAA has determined that the specialized skills and experience needed to address this phase of work and meet TPA standards do not exist among the local entities on the islands.

Some local groups have argued that they can capture the requisite expertise through subcontracts with off-island entities. NOAA does not believe that this type of arrangement, which is merely a "pass through" of funds and responsibility, would meet the spirit or intent of P.L. 104-91 to complete cleanup with minimum overhead, delay and duplication. However, NOAA will encourage any potential contractors for the more technical environmental response work to use local hire to the extent possible.

NOAA has recently been criticized for falling behind on the TPA schedule for completing cleanup on the islands. The delays NOAA has faced result in no small measure from our efforts to use local hire for cleanup work required by Public Law 104-91. NOAA has provided training to enhance local residents' and entities' skills to enable them to conduct environmental remediation work, and has sought to provide hands-on experience that would help to further qualify those residents and entities for the more specialized cleanup tasks.

In seeking to meet local hire goals, NOAA has spent an inordinate amount of time and effort negotiating cooperative agreements with local entities to accomplish the work required within reasonable financial and man-hour constraints. Much disagreement has existed over the reasonable costs and time frames for completing work. When compared to estimates of outside contractors, the local entity proposals have always been substantially inflated. While NOAA has continued to work to resolve these discrepancies, much time has been lost in the process.

In addition, on two separate known instances, one local entity being relied on for removal of wastes improperly and illegally disposed of wastes on the islands. One such incident led to State of Alaska and Department of Commerce Inspector General investigations. Both investigations slowed NOAA's ability to get any work accomplished, to the extent that NOAA essentially lost a full work season on the islands. In both instances, the local entity substantially deviated from and ignored detailed statement of work instructions as to the proper disposal of these wastes. In a third instance, the same entity ignored specific disposal instructions in its statement of work and disposed of wastes on property belonging to its parent

tribal corporation, which then demanded that NOAA incur the additional expense of paying for "waste storage." These are but a sampling of the difficulties we have encountered as we have sought to use local entities.

NOAA is attempting to move ahead in 1999 with an aggressive schedule to meet its TPA obligations. In order to meet State technical demands and avoid stipulated penalties and fines for exceeding timelines under the TPA, NOAA must hire qualified, off-island environmental professionals.

It is NOAA's view that using qualified, off-island environmental professionals as described above satisfies its obligation to use local hire to the maximum extent practicable under P.L. 104-91 without compromising its ability to fulfill its obligations and responsibilities under the TPA.

The Financial Contribution Prohibition

Section 3(b) of P.L. 104-91 provides that the Secretary of Commerce, in carrying out cleanup activities under section 3(a), shall "(5) not seek or require financial contributions by or from local entities or landowners." While the purpose of this provision may have been laudable, presumably to protect local entities or landowners from having to make payments they might be unable to afford, the practical effect has been to grant those entities and owners an unfettered license to increase the overall scope of cleanup required under section 3(a).

Section 3(a) requires NOAA to clean up, among other things, "landfills, wastes, dumps, (and) debris." Presumably, the P.L. 104-91 funding authorization was based on the anticipated cost of clean up as of the date of enactment of that statute. However, since local entities and landowners are protected from financial contribution, some Pribilovians have continued to dispose of materials in dumps and at other sites for which NOAA is being held responsible. This has made it impossible to establish any definitive end-point or cost boundaries for the cleanup process.

NOAA'S VIEWS ON THE "PRIBILOF ISLANDS TRANSITION ACT"

H.R. _____ has as its purpose "to complete the orderly withdrawal of (NOAA) from the civil administration of the Pribilof Islands ...". The Act provides for grants to "any city government, village corporation, or tribal council" of St. George or St. Paul, to fund or reimburse costs for certain projects. The Act conditions grants on a finding by the Secretary that the grants "will promote the development of a stable, self-sufficient, enduring, and diversified economy in the Pribilof Islands that is not dependent on sealing." Thus stated, the objectives of the Act are consistent with NOAA's overall mission to promote sustainable economic development, and with NOAA's resource management responsibilities which will continue on the islands after the agency's civil administration responsibilities are concluded.

While the Act's objectives are consistent with NOAA's mission of promoting sustainable economic development, and with our shared goal of completing NOAA's orderly withdrawal from the civil administration of the Pribilofs, there are a number of provisions in the Act that have the potential to conflict with those purposes. NOAA's detailed comments on the Act, and suggestions for changes to its provisions, are set out in Attachment 1. NOAA urges the committee to take the following fiscal policy considerations into account as it considers further action on H.R. _____.

Section 3 of H.R. _____ would amend section 206 of the Fur Seal Act (FSA) to establish a financial assistance grants program for the benefit of the Pribilofs. Section 5(b)(2)(C) of the bill pre-judges that the

entities identified in FSA section 206(a)(2)(A) will develop and submit proposed projects and plans that will justify appropriation and obligation of "all amounts authorized under section 206(c)" of the FSA as amended - a total of \$32,000,000. In NOAA's view, it remains to be seen whether proposed projects and plans will justify a pre-determined level of funding. NOAA recommends that section 5(b)(2)(C) of the Act be revised to impose a ceiling on amounts that may be obligated, but not a requirement to obligate all amounts appropriated, and further that amounts not obligated within a reasonable time - such as three years from the date of enactment - should revert to the general fund in the Treasury. In NOAA's view, it would be irresponsible to require that all funds appropriated be obligated, without first determining the merits of the projects proposed for funding.

On a related matter, NOAA understands from informal discussions with Pribilofs residents and their representatives that there may be a desire to use some portion of financial assistance provided under section 206 of the FSA as amended for acquisition of assets or services at sites not located on the islands. NOAA urges the committee to consider adding a provision to the Act that would limit use of any financial assistance awards to projects and activities that take place on the Pribilofs, or to acquisition of goods or services from off-island sources exclusively for use on the Pribilofs. While NOAA acknowledges it has certain obligations related to the islands and their residents, NOAA does not consider that it has any obligation to fund projects, investments or acquisitions at sites not on the Pribilofs.

Also, from informal discussions, NOAA understands that certain entities on the Pribilofs believe they should receive some guaranteed minimum allocation from the amounts authorized under H.R. _____ for financial assistance. NOAA would strongly oppose any guaranteed minimum allocation of funds, and would support only those allocations clearly linked to meritorious projects and plans consistent with the policy enunciated in section 206(a)(2)(B) of the FSA as amended by the Act, *i.e.*, projects and plans that "will promote the development of a stable, self-sufficient, enduring, and diversified economy in the Pribilof Islands that is not dependent on sealing." (Emphasis added.)

Mr. Chairman, that concludes my statement. Thank you again for inviting NOAA to participate in this hearing. I would be pleased to respond to any questions.

#